

## 28.1381(H).08

### Presumptions Of Intoxication

The amount of alcohol in a defendant's [blood/ breath/ ~~urine~~/ bodily substance] gives rise to the following presumptions:

1. If there was at that time 0.05 percent or less by concentration of alcohol in the defendant's [blood/ breath/ ~~urine~~/ bodily substance], it may be presumed that the defendant was not under the influence of intoxicating liquor.
2. If there was at that time an excess of 0.05 percent but less than 0.08 percent by concentration of alcohol in the defendant's [blood/ breath/ ~~urine~~/ bodily substance], such fact does not give rise to any presumption that the defendant was or was not under the influence of intoxicating liquor.
3. If there was at that time 0.08 percent or more by concentration of alcohol in the defendant's [blood/ breath/ ~~urine~~/ bodily substance], it may be presumed that the defendant was under the influence of intoxicating liquor.

The statute further provides that the foregoing provisions shall not be construed as limiting the introduction and consideration of any other competent evidence bearing upon the question of whether or not the defendant was under the influence of intoxicating liquor.

You are instructed to look at all the facts in the case. These are rebuttable presumptions; the jury is free to accept or reject these presumptions as triers of fact. Even with the assistance of the presumption, the state must prove every element of the crime charged, driving under the influence of intoxicating liquor, beyond a reasonable doubt, before you may find the defendant guilty.

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**SOURCE:** A.R.S. § 28-1381 **(G)** (H) (statutory language as of August 31, 2001).

**USE NOTE:** Use language in brackets as appropriate to the facts.

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